IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 6722 of 2007(A)

PETITIONER:

KERALA RUBBER AND RECLAIMS LTD.,
CARMEL CENTRE, BANERJI ROAD, KOCHI-18,
REPRESENTED BY SABEENA ABRAHAM,
MANAGING DIRECTOR.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:
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1. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM.

2. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM AT KAKKANAD.

3. STATE OF KERALA, REPRESENTED BY
THE SECRETARY (TAXES), GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

4. ASST. COMMISSIONER (ASSMT),
SPECIAL CIRCLE-1, COMMERCIAL TAXES,
ERNAKULAM.

BY GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

WP(C)NO.6722 OF 2007-A

Judgment

The petitioner is aggrieved by Ext.P3 assessment order of KGST for the for the year 2001-02 and Ext.P3(a) assessment order of CST for the very same year. It preferred Exts.P4 and P4(a) appeals against those orders. It also moved stay petitions along with them. Those stay petitions were heard together and Ext.P6 order has been passed, granting stay on condition of payment of 50% of the balance tax and on furnishing security for the remaining amount. The petitioner submits, there is total non-application of mind from the part of the appellate authority in issuing the said order. The order has been passed mechanically without adverting to the facts of the case.

2. Going by the grounds raised in the stay petitions, I feel that no ground has been made out, warranting grant of absolute stay. But, the learned counsel for the petitioner submits that the grounds in the appeal memorandums may be read as part of the grounds in the stay petitions. On going through the appeal memorandums, the dispute regarding the assessment of CST is only marginal. The main dispute is concerning the assessment of KGST. The addition of a turnover of Rs.5 lakhs under Section 5A of the KGST Act, along with the conceded turnover of Rs.8,97,686/- under Ext.P4 is unjustified, it is submitted. Further, the consignment sale accounted for about Rs.39 lakhs, has been ignored and double the amount has been added while making the assessment. The petitioner submits, if those illegalities committed by the assessing authority are

rectified, it will get substantial reliefs. But, going by the contentions of both sides, I feel that the direction to pay 50% of the amount cannot be said to be arbitrary or irrational. If the appellate authority feels that in any view of the matter, the petitioner will be liable to pay 50% of the amount assessed, the same cannot be said to be an arbitrary finding. Further, Ext.P6 is only an interim order. This Court can interfere with the same only on limited grounds. I find, no ground has been made out warranting interference with the same. In the result, the Writ Petition fails and it is dismissed. If the petitioner moves the appellate authority for extension of time and also for instalment facility for paying the 50% amount, the said authority will consider and pass appropriate orders thereon without delay.

28.02.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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